

### Remarks

The foregoing amendments and following remarks are responsive to the April 14, 2006 Office Action.

### Status of the Claims

Claims 41, 46 and 56 are amended. Claims 49-52 are cancelled. Claim 55 is withdrawn from consideration. Claims 41-48, 53-54 and 56-60 are pending.

### Support for the Amendments

Support for the amendments to Claims 41 and 56 is found on page 4, lines 12-16. Claim 46 is amended to correct a typographical error.

### Information Disclosure Statement (IDS)

The Examiner asserts that an explanation of the relevance of the Bruchausen and Robert references was not provided. In contrast, an explanation was provided in the IDS filed with the application on July 15, 2004.

Accordingly, the Examiner is respectfully requested to consider the Bruchausen and Robert references which are concisely and adequately described in the specification on page 6, lines 3-11 and page 44, lines 14-18 as outlined in the July 15, 2004 IDS filed with the application. A Supplemental PTO-Form 1449 is provided for the Examiner's convenience.

If the Examiner refuses to consider the Bruchausen and Robert references, the Examiner is respectfully requested to provide an explanation why the explanations of the relevance are unacceptable.

### Rejection under 35 U.S.C. 112, first paragraph

Claims 42-48, 54 and 56-60 were rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement.

The Examiner alleges that the phrase "plant extract" is not supported by an adequate number of examples. The statute mandates that "the specification shall



contain a written description of the invention". Although examples have been requested, examples are not necessary to satisfy the written description requirement.

The Examiner's statement that "Applicant has not set forth a representative number of examples in order to reasonably verify possession of such a potentially enormous number of extracts" is in error. The presence (or absence) of examples does not determine whether an applicant has "possession" of the invention. Moreover, there are many different methods disclosed for obtaining the extract on page 6, lines 1-8, and the Examples exemplify seeds, extracts, fruits and roots. One skilled in the art would know how to obtain or make an extract suitable for use in the method steps of the invention without the need for a description (and examples) of the various methods. Therefore, disclosing every method for obtaining an extract in the specification is not required. In addition, including the methods for obtaining the extract in the claims would be prolix.

The invention defined by the amended claims relates to a process for producing an active component, comprising the steps of (a) providing a fermentation broth comprising a plant component selected from the group consisting of plant constituents, plant extracts and mixtures thereof; (b) inoculating the fermentation broth with a mixture of microorganisms comprising at least one *Lactobacillus*, at least one *Lactococcus*, at least one *Leuconostoc* and at least one yeast; and (c) fermenting the microorganism-containing fermentation broth. The invention is directed to obtaining an active component through a series of method steps. The specification contains a sufficient written description of the above method steps, and accordingly, the rejection should be withdrawn. Reconsideration and withdrawal of the rejection is respectfully requested.

Rejections under 35 U.S.C. § 102(b)

Claims 41, 43-44, 49-51, 54, 57 and 59-60 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,653,984 (Fodor). Claims 41-43, 50-51, 57 and 60 were rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Publication No. 2001 212445 (Sawaki). Claims 41-43, 45-47 and 53 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,632,428 (Zhang).



Claim 41 (from which claims 42-47 and 53-54 depend) and Claim 56 (from which Claims 57 and 59-60 depend) are amended to clarify the invention. Claims 49-52 are cancelled, rendering the rejection moot.

Fodor relates to fermentation of an extract of periwinkle seeds by inoculating with a microorganism (*Lactobacillus*). Yeast extract may be added to the fermentation medium (col. 3, line 64 and col., 4, lines 19-26). Sawaki relates to a fermentation process employing rice and *Lactobacillus*. The lactic acid bacteria disclosed include *L. planterum*, *L. brevis*, *L. casei*, *L. cellobiosus*, *L. vaccinostrercus*, and *streptococcus faecalis bacillus*. Zhang relates to a fermentation process that produces red rice fermentation products.

None of the above cited references discloses inoculating the fermentation broth with a mixture of microorganisms comprising at least one *Lactobacillus*, at least one *Lactococcus*, at least one *Leuconostoc* and at least one yeast. Therefore, none of the cited references can be said to anticipate the invention, and the rejection should be withdrawn. Reconsideration and withdrawal of the rejection is respectfully requested.

#### Rejections under 35 U.S.C. § 103(a)

Claims 41-54 and 56-60 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fodor in view of Sawaki in view of Zhang. Claim 41 (from which claims 42-48 and 53-54 depend) and Claim 56 (from which Claims 57-60 depend) are amended to clarify the invention. Claims 49-52 are cancelled, rendering the rejection moot.

None of the cited references teach or suggest inoculating the fermentation broth with a mixture of microorganisms comprising at least one *Lactobacillus*, at least one *Lactococcus*, at least one *Leuconostoc* and at least one yeast as claimed. Moreover, there is no teaching, suggestion or motivation provided to one skilled in the art that in addition to *Lactobacillus* (and optionally yeast), additional microorganisms including *Lactococcus* and *Leuconostoc* may suitably be used as a mixture in a fermentation medium to reach the claimed invention. Therefore, it would not have been obvious, by inoculating a fermentation mixture with only *Lactobacillus* (and optionally yeast) that one



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would arrive at the invention with any reasonable expectation of success, and the rejection should be withdrawn. Reconsideration and withdrawal of the rejection is respectfully requested.

#### Fees

No fees are believed due. The Commissioner is authorized to charge any fees deemed due (or credit any balance owing) to Deposit Account No. 50-1177.

#### Conclusion

It is respectfully submitted that Claims 41-48, 53-54 and 56-60 are in condition for allowance. A Notice of Allowance is respectfully requested. If anything further is needed to advance the allowance of this application, the Examiner is urged to contact Applicants' attorney at the telephone number indicated below.

Respectfully submitted,

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Date



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JEA/mc